

103^D CONGRESS
2^D SESSION

H. R. 4590

To provide conditions for renewing nondiscriminatory (most-favored-nation) treatment for the People's Republic of China.

IN THE HOUSE OF REPRESENTATIVES

JUNE 16, 1994

Ms. PELOSI (for herself, Mr. GEPHARDT, Mr. BONIOR, Mr. MOAKLEY, Mr. RANGEL, Mr. STARK, Mr. ROSE, Mr. GILMAN, Mr. WOLF, Mr. SOLOMON, Mr. GEJDENSON, Mr. EDWARDS of California, Mr. LANTOS, Mr. SYNAR, Mr. HOYER, Mr. LEWIS of Georgia, Mr. ABERCROMBIE, Mr. ANDREWS of Maine, Mr. BARTON of Texas, Mr. BERMAN, Mr. CARDIN, Ms. ESHOO, Mr. FRANK of Massachusetts, Mr. HAMBURG, Ms. KAPTUR, Mrs. LOWEY, Mr. MARKEY, Ms. MCKINNEY, Mr. MFUME, Mr. MILLER of California, Mrs. MINK, Mr. OLVER, Mr. ROHRABACHER, Mr. SMITH of New Jersey, Mrs. UNSOELD, Ms. WOOLSEY, Mr. KENNEDY, Mr. HEFNER, and Mr. OBEY) introduced the following bill; which was referred jointly to the Committees on Ways and Means and Rules

A BILL

To provide conditions for renewing nondiscriminatory (most-favored-nation) treatment for the People's Republic of China.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “United States-China
5 Act of 1994”.

1 **SEC. 2. FINDINGS AND POLICY.**

2 (a) FINDINGS.—The Congress makes the following
3 findings:

4 (1) In Executive Order 12850, dated May 28,
5 1993, the President established conditions for re-
6 newing most-favored-nation treatment for the Peo-
7 ple's Republic of China in 1994.

8 (2) The Executive order requires that in rec-
9 ommending the extension of most-favored-nation
10 trade status to the People's Republic of China for
11 the 12-month period beginning July 3, 1994, the
12 Secretary of State shall not recommend extension
13 unless the Secretary determines that such extension
14 substantially promotes the freedom of emigration ob-
15 jectives contained in section 402 of the Trade Act of
16 1974 (19 U.S.C. 2432) and that China is complying
17 with the 1992 bilateral agreement between the
18 United States and China concerning export to the
19 United States of products made with prison labor.

20 (3) The Executive order further requires that in
21 making the recommendation, the Secretary of State
22 shall determine if China has made overall significant
23 progress with respect to—

24 (A) taking steps to begin adhering to the
25 Universal Declaration of Human Rights;

1 (B) releasing and providing an acceptable
2 accounting for Chinese citizens imprisoned or
3 detained for the nonviolent expression of their
4 political and religious beliefs, including such ex-
5 pressions of beliefs in connection with the De-
6 mocracy Wall and Tiananmen Square move-
7 ments;

8 (C) ensuring humane treatment of pris-
9 oners, and allowing access to prisons by inter-
10 national humanitarian and human rights orga-
11 nizations;

12 (D) protecting Tibet's distinctive religious
13 and cultural heritage; and

14 (E) permitting international radio and tele-
15 vision broadcasts into China.

16 (4) The Executive order requires the executive
17 branch to resolutely pursue all legislative and execu-
18 tive actions to ensure that China abides by its com-
19 mitments to follow fair, nondiscriminatory trade
20 practices in dealing with United States businesses
21 and adheres to the Nuclear Nonproliferation Treaty,
22 the Missile Technology Control Regime guidelines
23 and parameters, and other nonproliferation commit-
24 ments.

1 (5) The Government of the People's Republic of
2 China, a member of the United Nations Security
3 Council obligated to respect and uphold the United
4 Nations charter and Universal Declaration of
5 Human Rights, has over the past year made less
6 than significant progress on human rights. The Peo-
7 ple's Republic of China has released only a few
8 prominent political prisoners and continues to violate
9 internationally recognized standards of human rights
10 by arbitrary arrests and detention of persons for the
11 nonviolent expression of their political and religious
12 beliefs.

13 (6) The Government of the People's Republic of
14 China has not allowed humanitarian and human
15 rights organizations access to prisons.

16 (7) The Government of the People's Republic of
17 China has refused to meet with the Dalai Lama, or
18 his representative, to discuss the protection of Ti-
19 bet's distinctive religious and cultural heritage.

20 (8) It continues to be the policy and practice of
21 the Government of the People's Republic of China to
22 control all trade unions and suppress and harass
23 members of the independent labor union movement.

1 (9) The Government of the People's Republic of
2 China continues to restrict the activities of accred-
3 ited journalists.

4 (10) The People's Republic of China's defense
5 industrial trading companies and the People's Lib-
6 eration Army engage in lucrative trade relations
7 with the United States and operate lucrative com-
8 mercial businesses within the United States. Trade
9 with and investments in the defense industrial trad-
10 ing companies and the People's Liberation Army are
11 contrary to the national security interests of the
12 United States.

13 (11) The President has conducted an intensive
14 high-level dialogue with the Government of the Peo-
15 ple's Republic of China, including meeting with the
16 President of China, in an effort to encourage that
17 government to make significant progress toward
18 meeting the standards contained in the Executive
19 order for continuation of most-favored-nation treat-
20 ment.

21 (12) The Government of the People's Republic
22 of China has not made overall significant progress
23 with respect to the standards contained in the Presi-
24 dent's Executive Order 12850, dated May 28, 1993.

1 (b) POLICY.—It is the policy of the Congress that,
2 since the President has recommended the continuation of
3 the waiver under section 402(d) of the Trade Act of 1974
4 for the People’s Republic of China for the 12-month period
5 beginning July 3, 1994, such waiver shall not provide for
6 extension of nondiscriminatory trade treatment to goods
7 that are produced, manufactured, or exported by the Peo-
8 ple’s Liberation Army or Chinese defense industrial trad-
9 ing companies or to nonqualified goods that are produced,
10 manufactured, or exported by state-owned enterprises of
11 the People’s Republic of China.

12 **SEC. 3. LIMITATIONS ON EXTENSION OF NONDISCRIM-**
13 **INATORY TREATMENT.**

14 (a) IN GENERAL.—Notwithstanding any other provi-
15 sion of law—

16 (1) if nondiscriminatory treatment is not grant-
17 ed to the People’s Republic of China by reason of
18 the enactment into law of a disapproval resolution
19 described in subsection (b)(1), nondiscriminatory
20 treatment shall—

21 (A) continue to apply to any good that is
22 produced or manufactured by a person that is
23 not a state-owned enterprise of the People’s Re-
24 public of China, but

1 (B) not apply to any good that is pro-
2 duced, manufactured, or exported by a state-
3 owned enterprise of the People's Republic of
4 China,

5 (2) if nondiscriminatory treatment is granted to
6 the People's Republic of China for the 12-month pe-
7 riod beginning on July 3, 1994, such nondiscrim-
8 inatory treatment shall not apply to—

9 (A) any good that is produced, manufac-
10 tured, or exported by the People's Liberation
11 Army or a Chinese defense industrial trading
12 company, or

13 (B) any nonqualified good that is pro-
14 duced, manufactured, or exported by a state-
15 owned enterprise of the People's Republic of
16 China, and

17 (3) in order for nondiscriminatory treatment to
18 be granted to the People's Republic of China, and
19 subsequent to the granting of such nondiscrim-
20 inatory treatment, the Secretary of the Treasury
21 shall consult with leaders of American businesses
22 having significant trade with or investment in the
23 People's Republic of China, to encourage them to
24 adopt a voluntary code of conduct that—

1 (A) follows internationally recognized
2 human rights principles,

3 (B) ensures that the employment of Chi-
4 nese citizens is not discriminatory in terms of
5 sex, ethnic origin, or political belief,

6 (C) ensures that no convict, forced, or in-
7 dentured labor is knowingly used,

8 (D) recognizes the rights of workers to
9 freely organize and bargain collectively, and

10 (E) discourages mandatory political indoc-
11 trination on business premises.

12 (b) DISAPPROVAL RESOLUTION.—

13 (1) IN GENERAL.—For purposes of this section,
14 the term “resolution” means only a joint resolution
15 of the two Houses of Congress, the matter after the
16 resolving clause of which is as follows: “That the
17 Congress does not approve the extension of the au-
18 thority contained in section 402(c) of the Trade Act
19 of 1974 recommended by the President to the Con-
20 gress on _____ with respect to
21 the People’s Republic of China because the Congress
22 does not agree that the People’s Republic of China
23 has met the standards described in the President’s
24 Executive Order 12850, dated May 28, 1993.”, with

1 the blank space being filled with the appropriate
2 date.

3 (2) APPLICABLE RULES.—The provisions of
4 sections 153 (other than paragraphs (3) and (4) of
5 subsection (b)) and 402(d)(2) (as modified by this
6 subsection) of the Trade Act of 1974 shall apply to
7 a resolution described in paragraph (1).

8 (c) DETERMINATION OF STATE-OWNED ENTER-
9 PRISES AND CHINESE DEFENSE INDUSTRIAL TRADING
10 COMPANIES.—

11 (1) IN GENERAL.—Subject to paragraphs (2)
12 and (3), not later than 90 days after the date of the
13 enactment of this Act, the Secretary of the Treasury
14 shall determine which persons are state-owned enter-
15 prises of the People's Republic of China and which
16 persons are Chinese defense industrial trading com-
17 panies for purposes of this Act. The Secretary shall
18 publish a list of such persons in the Federal Reg-
19 ister.

20 (2) PUBLIC HEARING.—

21 (A) GENERAL RULE.—Before making the
22 determination and publishing the list required
23 by paragraph (1), the Secretary of the Treasury
24 shall hold a public hearing for the purpose of

1 receiving oral and written testimony regarding
2 the persons to be included on the list.

3 (B) ADDITIONS AND DELETIONS.—The
4 Secretary of the Treasury may add or delete
5 persons from the list based on information
6 available to the Secretary or upon receipt of a
7 request containing sufficient information to
8 take such action.

9 (3) DEFINITIONS AND SPECIAL RULES.—For
10 purposes of making the determination required by
11 paragraph (1), the following definitions apply:

12 (A) CHINESE DEFENSE INDUSTRIAL TRAD-
13 ING COMPANY.—The term “Chinese defense in-
14 dustrial trading company”—

15 (i) means a person that is—

16 (I) engaged in manufacturing,
17 producing, or exporting, and

18 (II) affiliated with or owned, con-
19 trolled, or subsidized by the People’s
20 Liberation Army, and

21 (ii) includes any person identified in
22 the United States Defense Intelligence
23 Agency publication numbered VP-1920-
24 271-90, dated September 1990.

1 (B) PEOPLE’S LIBERATION ARMY.—The
2 term “People’s Liberation Army” means any
3 branch or division of the land, naval, or air
4 military service or the police of the Government
5 of the People’s Republic of China.

6 (C) STATE-OWNED ENTERPRISE OF THE
7 PEOPLE’S REPUBLIC OF CHINA.—(i) The term
8 “state-owned enterprise of the People’s Repub-
9 lic of China” means a person who is affiliated
10 with or wholly owned, controlled, or subsidized
11 by the Government of the People’s Republic of
12 China and whose means of production, prod-
13 ucts, and revenues are owned or controlled by
14 a central or provincial government authority. A
15 person shall be considered to be state-owned
16 if—

17 (I) the person’s assets are primarily
18 owned by a central or provincial govern-
19 ment authority;

20 (II) a substantial proportion of the
21 person’s profits are required to be submit-
22 ted to a central or provincial government
23 authority;

24 (III) the person’s production, pur-
25 chases of inputs, and sales of output, in

1 whole or in part, are subject to state, sec-
2 toral, or regional plans; or

3 (IV) a license issued by a government
4 authority classifies the person as state-
5 owned.

6 (ii) Any person that—

7 (I) is a qualified foreign joint venture
8 or is licensed by a governmental authority
9 as a collective, cooperative, or private en-
10 terprise; or

11 (II) is wholly owned by a foreign per-
12 son,

13 shall not be considered to be state-owned.

14 (D) QUALIFIED FOREIGN JOINT VEN-
15 TURE.—The term “qualified foreign joint ven-
16 ture” means any person—

17 (i) which is registered and licensed in
18 the agency or department of the Govern-
19 ment of the People’s Republic of China
20 concerned with foreign economic relations
21 and trade as an equity, cooperative, con-
22 tractual joint venture, or joint stock com-
23 pany with foreign investment;

24 (ii) in which the foreign investor part-
25 ner and a person of the People’s Republic

1 of China share profits and losses and joint-
2 ly manage the venture;

3 (iii) in which the foreign investor
4 partner holds or controls at least 25 per-
5 cent of the investment and the foreign in-
6 vestor partner is not substantially owned
7 or controlled by a state-owned enterprise of
8 the People's Republic of China;

9 (iv) in which the foreign investor part-
10 ner is not a person of a country the gov-
11 ernment of which the Secretary of State
12 has determined under section 6(j) of the
13 Export Administration Act of 1979 (50
14 U.S.C. App. 2405(j)) to have repeatedly
15 provided support for acts of international
16 terrorism; and

17 (v) which does not use state-owned
18 enterprises of the People's Republic of
19 China to export its goods or services.

20 (E) PERSON.—The term “person” means
21 a natural person, corporation, partnership, en-
22 terprise, instrumentality, agency, or other en-
23 tity.

24 (F) FOREIGN INVESTOR PARTNER.—The
25 term “foreign investor partner” means—

1 (i) a natural person who is not a citi-
2 zen of the People’s Republic of China; and

3 (ii) a corporation, partnership, instru-
4 mentality, enterprise, agency, or other en-
5 tity that is organized under the laws of a
6 country other than the People’s Republic
7 of China and 50 percent or more of the
8 outstanding capital stock or beneficial in-
9 terest of such entity is owned (directly or
10 indirectly) by natural persons who are not
11 citizens of the People’s Republic of China.

12 (G) NONQUALIFIED GOOD.—The term
13 “nonqualified good” means a good to which
14 chapter 39, 44, 48, 61, 62, 64, 70, 73, 84, 93,
15 or 94 of the Harmonized Tariff Schedule of the
16 United States applies.

17 (H) CONVICT, FORCED, OR INDENTURED
18 LABOR.—The term “convict, forced, or inden-
19 tured labor” has the meaning given such term
20 by section 307 of the Tariff Act of 1930 (19
21 U.S.C. 1307).

22 (I) VIOLATIONS OF INTERNATIONALLY
23 RECOGNIZED STANDARDS OF HUMAN RIGHTS.—
24 The term “violations of internationally recog-
25 nized standards of human rights” includes but

1 is not limited to, torture, cruel, inhuman, or de-
2 grading treatment or punishment, prolonged de-
3 tention without charges and trial, causing the
4 disappearance of persons by abduction and
5 clandestine detention of those persons, secret
6 judicial proceedings, and other flagrant denial
7 of the right to life, liberty, or the security of
8 any person.

9 (J) MISSILE TECHNOLOGY CONTROL RE-
10 GIME.—The term “Missile Technology Control
11 Regime” means the agreement, as amended, be-
12 tween the United States, the United Kingdom,
13 the Federal Republic of Germany, France,
14 Italy, Canada, and Japan, announced on April
15 16, 1987, to restrict sensitive missile-relevant
16 transfers based on an annex of missile equip-
17 ment and technology.

18 (d) SEMIANNUAL REPORTS.—The Secretary of the
19 Treasury shall, not later than 6 months after the date of
20 the enactment of this Act, and the end of each 6-month
21 period occurring thereafter, report to the Congress on the
22 efforts of the executive branch to carry out subsection (c).
23 The Secretary may include in the report a request for ad-
24 ditional authority, if necessary, to carry out subsection (c).
25 In addition, the report shall include information regarding

1 the efforts of the executive branch to carry out subsection
2 (a)(3).

3 **SEC. 4. PRESIDENTIAL WAIVER.**

4 The President may waive the application of any con-
5 dition or prohibition imposed on any person pursuant to
6 this Act, if the President determines and reports to the
7 Congress that the continued imposition of the condition
8 or prohibition would have a serious adverse effect on the
9 vital national security interests of the United States.

10 **SEC. 5. REPORT BY THE PRESIDENT.**

11 If the President recommends in 1995 that the waiver
12 referred to in section 2 be continued for the People's Re-
13 public of China, the President shall state in the document
14 required to be submitted to the Congress by section 402(d)
15 of the Trade Act of 1974, the extent to which the Govern-
16 ment of the People's Republic of China has made progress
17 during the period covered by the document, with respect
18 to—

19 (1) adhering to the provisions of the Universal
20 Declaration of Human Rights,

21 (2) ceasing the exportation to the United States
22 of products made with convict, force, or indentured
23 labor,

1 (3) ceasing unfair and discriminatory trade
2 practices which restrict and unreasonably burden
3 American business, and

4 (4) adhering to the guidelines and parameters
5 of the Missile Technology Control Regime, the con-
6 trols adopted by the Nuclear Suppliers Group, and
7 the controls adopted by the Australia Group.

8 **SEC. 6. SANCTIONS BY OTHER COUNTRIES.**

9 If the President decides not to seek a continuation
10 of a waiver in 1995 for the People's Republic of China
11 under section 402(d) of the Trade Act of 1974, the Presi-
12 dent shall, during the 30-day period beginning on the date
13 that the President would have recommended to the Con-
14 gress that such a waiver be continued, undertake efforts
15 to ensure that members of the General Agreement on Tar-
16 iffs and Trade take a similar action with respect to the
17 People's Republic of China.

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